

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Monday, October 4, 2010, @ 6:30 p.m.**
 Office of Zoning Hearing Room
 441 4th Street, N.W., Suite 220
 Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 08-06-12 (Comprehensive Zoning Regulations Review: Planned Unit Development)

THIS CASE IS OF INTEREST TO ALL ANCs

This Notice of Public Hearing announces the twelfth of several proposed subject areas the Zoning Commission for the District of Columbia (the “Commission”) will consider under this docket. All recommendations offered by the Office of Planning (“OP”) under this docket have been reviewed by a working group and a subject matter task force as part of a process designed to ensure full public participation. Nevertheless, this process cannot replace or limit the public hearing process required in the Zoning Act or the Commission's responsibility to consider the merits of each proposal submitted.

This hearing will consider general recommendations for conceptual changes to the zoning regulations regarding planned unit development (“PUD”). The recommendations propose dividing the existing PUD process into three separate processes. The recommendations focus on clarifying regulations for bonus density, public benefits, community involvement, review process, and enforcement for all types of posed processes, a point system for acceptance of public benefits, guidelines for community input, and various pre- and post-application requirements.

This hearing, like all others under this case number, is being scheduled without adherence to the set-down requirements stated at 11 DCMR § 3011 because the Commission waived the requirement at its public meeting held April 14, 2008. The Commission also waived the requirement that a pre-hearing statement be submitted before hearing notices can be published.

It is not expected that the Commission will take proposed action with respect to these recommendations, but that it will make determinations at a public meeting that will serve as guidance for drafting revisions to the zoning regulations pertaining to downtown zoning and other relevant subject matters. More detailed information on the recommendations can also be found in the OP report document at <http://www.dczoningupdate.org/pud.asp>.

Title 11 DCMR (Zoning) is proposed to be amended as follows:

Recommendations

1. Divide the existing PUD process into three separate processes:

a. Type 1 “Design Review”

– No density increase above matter of right – flexibility tied to design review

Characteristics:

- No additional density granted
- No map amendment possible
- Dimensional flexibility available, including:
 - Height
 - Yards
 - Lot occupancy
- Use of process optional except where required by zone

b. Type 2 “Design Review with Bonus Density”

– Limited density increase

Characteristics:

- Includes design review
- No map amendment possible
- Dimensional flexibility available
- Limited additional density available (See Recommendation 2, below)
- Granting of density above MOR is related to public benefits

c. Type 3 “Project Specific Rezoning”

– Major density increase – Project Specific Rezoning

Characteristics:

- Includes design review
- PUD associated map change permitted
- Dimensional flexibility available
- Bonus density available above Type 2 limits
- Granting of density above original zone’s MOR is related to public benefits

Based on the overwhelming preponderance of best practice examples, this concept was presented to the PUD working group in a discussion of the process. There was general working group support for having multiple processes, particularly for separating out projects accompanied by map amendments, as those were seen as having the greatest impact in terms of increased bonus density on a site. Making distinctions in process would allow the Commission and the community to spend more time on projects with the potential for greater size and impact and less time on projects with lower potential for size and impact.

Type 1

In the suggested continuum of projects, Type 1 requests would be the least intense. This process would be similar to and encompass to the mandatory design review process found in existing zones (e.g., CG, SEFC, H Street). While no additional density would be allowed, projects could obtain height and dimensional flexibility in return for design review at the Zoning Commission. For this type of project, the benefit offered to the city is design review by the Commission; since no bonus density is available, no additional public benefits are needed.

This proposed process would fill a need in this city to allow for “public good” projects. Unlike a variance process that requires proof of a hardship, this process would allow for relief of building controls that may not be physically necessary, but would result in superior design to a matter-of-right building. Examples of this might include height relief to allow a taller but narrower building or lot occupancy relief to allow a shorter but wider building where it is appropriate based on the surrounding character. This process would not allow for increase of FAR. A further possible use of this process might be the reuse of historic landmark buildings where no rezoning is appropriate, but building flexibility is needed.

While all three proposed processes would be available as an option anywhere in the city, the Type 1 process could be required by the Commission where it is deemed appropriate, including areas where design review is currently required.

As the Type 1 process is the least intense, it would naturally have the simplest process. These projects would need less pre-hearing interaction, and be more similar to a Special Exception than a traditional PUD in the overall process.

Type 2

Type 2 requests would allow limited density increases but no change of the existing zoning. This process can most closely be related to a traditional PUD without an associated map amendment. While the zoning is not changing, additional density is being requested in exchange for public benefits and amenities. This process would include the same design review as a Type 1 as well as offering the same height and dimensional flexibility; the difference would be that the Commission would also weigh additional density (FAR) against proffered public benefits.

Subsequent recommendations address how the bonus density and public benefit review would work. In general, the additional density available would be proportional across zones (see Recommendation #2) and directly related to the amount and types of public benefits provided (see Recommendation #6).

The process for a Type 2 application would be more similar to a traditional PUD process than a Type 1. Changes described in Recommendation #7 would increase community interaction prior to the application, potentially removing the need for a separate setdown meeting.

Type 3

The proposed Type 3 process combines all of the aspects of the Types 1 and 2 with a rezoning. This is most analogous to a traditional PUD with a related map amendment. The process would include design review, public benefit review, and flexibility for height, density, and building bulk standards.

Since projects in this process would be increasing the zoning on their property, this process would offer the greatest potential increases in bonus density and require the most of the applicants in terms of the provision of public benefits and amenities.

As with the existing PUD process, available bonus density would be dependent on the zone requested, and approval of zone changes would be dependent on Comprehensive Plan guidance. Public benefits would be related to the bonus density requested (see Recommendation #6).

The process for a Type 3 application would include all aspects of the existing PUD process in addition to the community involvement in Recommendation #7.

2. Base the density increase available within each zone on a standard percentage across zones

Maximum density increase should be:

- **20% above the greater of the current maximum matter-of-right (including IZ) for residential FAR**
- **30% above the maximum current matter-of-right for non-residential FAR**

The proposed recommendation would set the amount of bonus density available as a standard percentage across all zones. This would even out the currently skewed distribution of bonus density among zones, lessen the incentives for PUD-related map amendments, increase the opportunity for projects resulting in public review and public benefits, and provide more predictability about what level of density may be permitted in each zone. The percentage would also account for the impact of IZ regulations on the PUD process.

Residential FAR

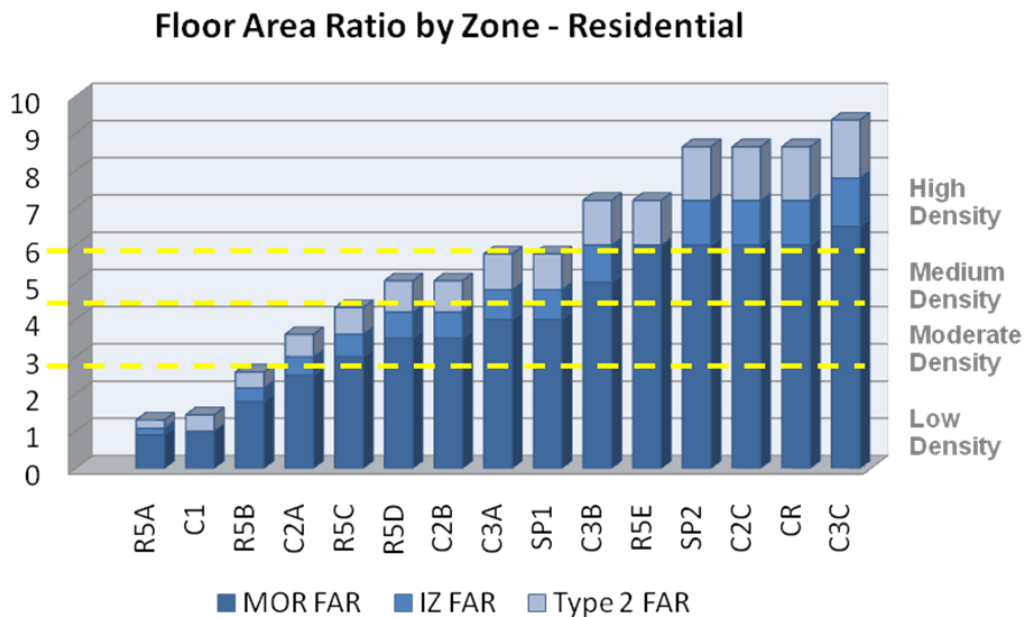
OP analyzed the existing differences between matter-of-right FAR and PUD FAR in all zones and accounted for IZ when determining matter-of-right zoning. The range of PUD density allowance across zones is from 7% below to 43% above matter-of-right, meaning that

there are some zones where applying for a PUD allows less density than can be achieved as a matter-of-right. Overall, the average density that can be gained above matter-of-right through a PUD process is 20%.

Making this average value the standard rather than a different value in each zone would simultaneously reduce the bonus density discrepancies among zones and reduce the incentives to seek a new associated zone category for projects in those zones where a PUD grants relatively little bonus density.

A standard 20% increase would also ensure that the density bonuses allowed remain consistent with the land use designations in the Comprehensive Plan and the zone districts associated with each of those land uses. This is illustrated in the chart below, which shows the existing MOR densities in dark blue, the existing PUD FAR limits in medium blue, and the proposed FAR limits for discretionary residential projects in selected zones in the lightest blue. The dashed lines indicate FAR thresholds among land use designations identified in the Comprehensive Plan.

FIGURE 3 –RESIDENTIAL FLOOR AREA RATIO BY ZONE



For example, for the C-2-A zone, which is classified as a moderate density commercial land use in the Comprehensive Plan, the proposed Type 2 project FAR would be 3.5, -- 20% higher than the existing IZ limit. This amount, while exceeding the existing PUD maximum

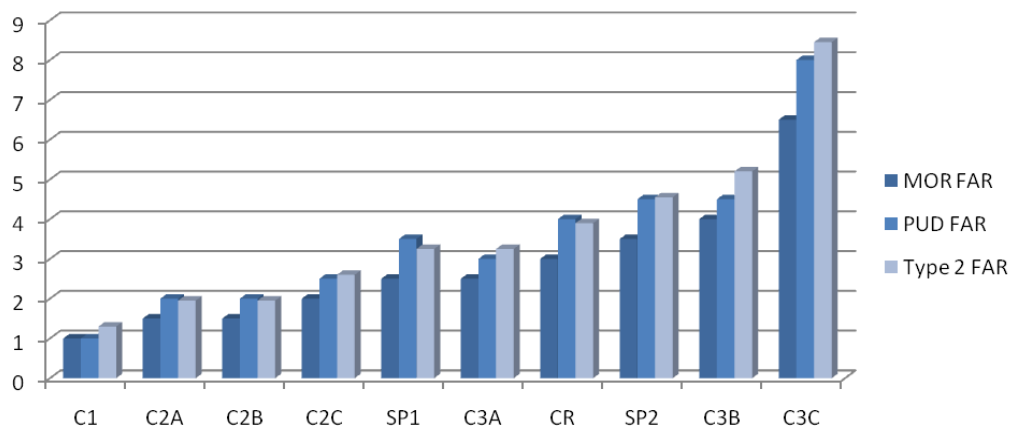
of 3.0 is still consistent with floor area ratios allowed for other zone districts within the moderate density land use designation. Similarly, the proposed FAR maximums for projects within the SP-1, C-3-A, and C-2-B zones (all within the medium density land use category) would not exceed 6.0, which is the uppermost end of the medium density development, based on the Comprehensive Plan.

Non-Residential FAR

While IZ regulations do not impact non-residential projects, the PUD bonus densities available to non-residential projects exhibit the same uneven distribution pattern as those for residential projects. This has led some PUD working group members to express frustration with the unpredictability of PUD bonuses, and may have contributed to the concentrations of PUDs in relatively few zones. The bonus density offered for non-residential FAR via planned unit developments ranges from 12.5% to 40% over current matter of right levels. The average value of this difference is approximately 30%.

Making this average value the standard would add predictability to the process and would be highly consistent with existing PUD limits. As with the proposed changes to FAR bonus maximums for discretionary residential projects, the increases proposed for non-residential projects would remain consistent with Comprehensive Plan land use designations and their related densities and zones.

FIGURE 4 – NON-RESIDENTIAL FLOOR AREA RATIO BY ZONE



Just like current PUD FAR maximums, the maximums proposed by this section do not represent what can be built on a lot, only the maximum that can be applied for under a zone. Whether the proposed PUD maximum is higher, lower, or the same as the proposed maximum, the standardization proposed is neither a giving or taking density from any

project, zone, or site. It would only better define when a project must apply for a zone change, adding significance to the concept of a zone change and making the entire process more predictable.

With OP recommending 20% for residential and 30% for commercial, it may seem that it is favoring non-residential projects over residential projects. This is not the case when put into context. The proposed 30% non-residential bonus is a redistribution of the discretionary increases that now exist for non-residential projects. It is not an increase in the overall average. There would actually be equivalencies or decreases in available bonus density in six of the ten zones.

- 3. Retain a relatively large lot size minimum for PUDs in low and moderate density residential zones and relate minimum size for all other zones to the amount of flexibility being requested.**

	Type 1	Type 2	Type 3
Low/Mod Residential Zones	2 AC	N/A	N/A
Other Zones (incl. R-5-B)	None	15K sq. ft.	15K sq. ft.

Type 1

As stated earlier, PUD requests have varied widely in terms of their size and scope. All however, have benefitted from the opportunity for design review that the PUD process provides. As a result, Type 1 requests would not have a lot size minimum outside of low density residential districts. Because these requests do not allow bonus density and would be optional in most cases, OP recommends leaving lot size unrestricted, making it easier for applicants to request dimensional flexibility in return for design review. This would be consistent with how mandatory design review for certain zones is currently addressed in the zoning regulations. Currently, projects which only require additional height or dimensional flexibility must utilize a special exception or variance process to obtain zoning relief. As a result, they are heard and decided by the BZA, which in most cases, has no authority or review standards with regard to issues of design. Allowing projects, regardless of their size, to pursue a design review process to obtain a limited amount of dimensional flexibility would

open up the option for design review to a wider variety of projects, helping to improve and encourage quality design at all scales.

Type 2 & Type 3

Type 2 & 3 requests would be subject to the same lot size minimum as in place currently. The only change would be to consolidate the lot size threshold for R-5-B and W-0 zones with that of the commercial zones. These zones currently have a 1 AC minimum lot size. An evaluation of both zones offers little insight as to why they should continue to utilize a different minimum lot size standard. These two zones comprise a relatively small amount of land within the District. The W-0 zone offers virtually no incentive for PUDs, has not seen any in its history, and as a result is less pertinent to the analysis. Alternatively, the R-5-B zone offers significant development potential, even beyond what is now permitted as a matter of right for residential development under current inclusionary zoning allowance. The R-5-B zone also has no minimum lot size for matter of right development, unlike the other low and moderate density residential zones.

In an effort to simplify the minimum lot size requirements, the current distinction for these zones would be eliminated and both would have the same standards as applied to the higher density zones. As a result, the proposed reduction in minimum lot size would continue to encourage the use of PUDs in the R-5-B zone and maintain design review of such projects at the Zoning Commission. Finally, for this review type the goal is also to not be overly restrictive since map amendments are not permitted and projects are more limited in the amount of available bonus density they can achieve.

- 4. Permit Commission to consider minimum lot size waivers for additional categories of projects including:**
- **Redevelopment consistent with approved Small Area Plan**
 - **Government projects**
 - **Compatible infill development**

The existing criteria would be retained and two new standards would be added to expand the types of projects that may request a lot size waiver and provide more guidance to the Zoning Commission about what projects may be considered “of exceptional merit”. These would include government projects, which could be afforded lot size waivers to help facilitate their redevelopment (e.g., school reuse projects). In addition, PUDs are often used as a mechanism to implement development objectives found in adopted small area plans. As a result, sites that may not meet the required minimum lot size but are clearly linked to the fulfillment of a small area plan goal or initiative would be given the opportunity to request a waiver from the Zoning Commission. Finally, smaller infill sites that may be difficult to develop should be able to pursue a lot size waiver. These may include the redevelopment of historic landmark sites, which often are improved with large structures no longer suitable or practical for a single use function. Such infill redevelopment would be encouraged, provided it can demonstrate it will be compatible with surrounding uses and character.

5. Codify a list of specific and measureable public benefits

Benefits would be clearly defined and would have to meet the following standards:

- Must be measurable and specific;
- Cannot include monetary contributions (except to District housing funds); and
- Should last for life of the project unless specified.

Best practices research revealed that most cities with PUD-type programs identified desirable and acceptable public amenities in the code. Approaches to defining and valuing public benefits included impact fees used in Boston, percentage bonuses in Portland and a point based system in Minneapolis. Among the alternatives presented, working group participants were most receptive to the use of a point based system. None of the cities researched included monetary contribution in their evaluation.

Based on an analysis of benefits provided in previously approved PUDs, comments from the PUD workgroup meetings, research from other jurisdictions, and a comprehensive review of small area plans, OP has created a draft list of public benefits. The proposed list identifies benefits of value to the general public and the surrounding neighborhood and are grouped into six categories; Building Space, Environment, Housing, Recreation, Transportation and Other (See OP report for full list). At this time the list is still in very draft form and is expected to change based on public, Taskforce, and Zoning Commission input.

The list that is ultimately approved is intended to represent the full menu of proffers that will be deemed acceptable to balance additional density requests; however the list is also intended to be a changeable document. It is expected that the ZC and OP will regularly review and update the proffer list as well as adding local ANC suggested priorities when appropriate. OP suggests a mandatory three year review of the list in the future.

6. Create a point system to establish relationship between density and public benefits

Relate benefits to density increases.

- Provide point value for each benefit
- Assign minimum point threshold for Type 2 and Type 3 projects

In order to provide consistency as to how benefits are provided and assigned, OP suggests assigning a point value to each benefit (full table is provided in the OP report). In addition, this would ensure that the provision of benefits is commensurate with the level of bonus density being requested. The more specific and easily measurable benefits that can be identified upfront, within the regulations, the more certainty communities and applicants can have about what is expected of the process and from the project.

The system would work by having a minimum point threshold for Type 2 and 3 projects. For example, to access any of the 20% bonus density available through a Type 2 project, an applicant might have to provide 20 points worth of benefits from the list. As a result, benefits provided would be directly related to the bonus density being sought. The proposed list includes the proposed benefit/amenity, a defining standard to help clarify what is being expected, and a numerical point value. Values on the sample table below have not been fully vetted. If the Zoning Commission finds this approach acceptable, additional research will have to be done to determine the appropriate values to be associated with each benefit as well as the minimum threshold for each PUD type.

- 7. Formalize the pre-application process for the developer and the community**
- **Require a public meeting between applicant and ANC prior to filing PUD**
 - **Require applicant to document community participation**
 - **Correlate the level of community review w/ process type**

The proposed community input process would include the following steps:

1. Pre-application meeting required for Type 2 and 3 projects.
2. Applicant notifies ANC and OP of potential project.
3. ANC schedules project meeting with applicant; OP attends.
4. Application may be filed 45 days after initial ANC notification.
5. Applicant must highlight changes, if any, resulting from community input.

Filings should include:

- Copies of correspondence;
- Receipts of registered or certified mail; and
- ANC letter (if applicable).

Community members have expressed a desire to become more informed about the project and have earlier opportunities for input into the process. The recommended pre-application meeting is meant to formalize the start of the process for community input well before the

start of the public hearing. The proposed review period starts the clock for community input but does not preclude the applicant from eventually moving ahead to a public hearing. The recommended changes also provide more direction as to how applicants should document their community participation efforts. The new process also calls for OP attendance at the pre-application meeting, to provide informational support to ANCs and learn about potential community concerns early. Finally, the proposed process would apply only to Type 2 and 3 requests, leaving out projects that would not result in increased development density.

8. Adopt the following time periods for PUD orders and criteria for extension requests:

Proposed PUD Time Extension Summary Table

	Type 1	Types 2 and 3
Original Approval	No limit	2 yrs until filing for bldg. permit
Extensions	Not Applicable	2 years (or less as deemed by ZC)
Maximum Number of Extensions	Not Applicable	Two
Criteria for Extensions	Not Applicable	<ul style="list-style-type: none">•File with OZ, ANC, parties 30-90 days before expiration•No substantial change to material facts•Inability to obtain financing•Delay of governmental approvals•Existing or pending litigation

The proposed recommendation would set clear limits on the number and length of extensions for PUD approvals. Existing criteria regarding the applicant's ability to obtain financing, delays in governmental approvals, and the impact of present or pending litigation would be retained as well as the notification requirement to all parties.

9. Add filing requirements to improve clarity of Commission-approved benefits and conditions:

- Prior to proposed action submission
 - Applicant must provide a table showing the following:
 - Proposed benefits
 - Number of points earned for each
 - How the standard for each benefit is met
- Prior to final action submission
 - Applicant must provide:

- Full and comprehensive set of updated plans, accurately dated
- Table showing all approved benefits with timetable
- Any other documents required by the ZC

The proposed filing requirements would give applicants, the Zoning Commission, and all interested parties a clearer picture of what benefits and amenities are being proffered at two critical stages of the approval process, proposed action and final action. The proposed benefits list would give the Commission a standardized measure by which to review and evaluate a project's proposed benefits and amenities against the requested zoning flexibility. Requiring applicants to state how and when the provision of each benefit will be met also creates a useful tool for enforcement staff to assess whether or not a condition has been met.

The final action submission could then be easily added to the Zoning Commission order and help keep all documents related to the project in one place. In order to streamline the process, OP, OZ, and OAG staff should work together to create a benefit/conditions format for commonly proffered items. This would help improve the clarity/consistency issue with regard to how order conditions are worded and assist enforcement staff when determining project compliance.

Public benefits and project amenities are discussed at length during the public hearing process, after which point they become conditions of final PUD approval. However the parties engaged in these discussions are not responsible for their enforcement. Once the permit process begins, the Zoning Administrator is responsible for both the review of building permits and enforcement of PUD conditions. In addition, the final order language is not always clear with regard to the intent of the condition. As a result, enforcement staff is left to discern project compliance with conditions that are often vague or inconsistently worded across different projects. From the community perspective, it is also difficult to determine if PUD benefits are being provided, especially ones that are not physical improvements. This is complicated further if the final order does not include an established timeframe for the delivery and/or completion of proffered benefits and amenities.

Finally, applicants who wish to comply with established conditions sometimes find it difficult due to matters beyond their control. For example, if a proposed building material is no longer available or if provision of a project amenity does not receive the necessary approvals from another agency, this may delay the project and jeopardize its completion within the specified timeframe. When these instances occur, applicants are left to either negotiate such matters with the Zoning Administrator or return to the Zoning Commission to request a PUD modification.

10. Define process for condition enforcement

Proposed post-approval audit process:

A. Zoning Administrator reviews provision of PUD conditions during permit process

B. Temporary Certificate of Occupancy issued if all benefits have not been provided

C. Applicant must return to Zoning Commission if conditions cannot be met by expiration of Temporary C of O

A post approval audit by the Zoning Administrator is being recommended to assist in the enforcement of PUD conditions. A clear timeline would be established because all conditions must be met prior to the issuance of a Certificate of Occupancy (C of O). If all project conditions have not been met at the time of certificate of occupancy issuance, a temporary C of O may be granted by the Zoning Administrator. This would be valid for a specified period of time (typically 6-12 months). If the condition in question has not been met by the expiration of the temporary C of O, the applicant must request modification of the final approval from the Zoning Commission. The PUD modification request must include an equivalent alternative and explain why benefits cannot be provided at the public hearing. This recommendation creates a clear process for the enforcement of PUD-related conditions and provides an opportunity for applicants to make a case for their inability to comply. In addition, it offers an applicant the flexibility to provide an alternative benefit, and if that cannot be accomplished, the process requires a return to the Zoning Commission to help ensure that an appropriate solution is found.

PROCEDURES

The public hearing on this part of Case No. 08-06 will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning. The Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to the Secretary of the Zoning Commission, Office of Zoning, Suite 200-S, 441 4th Street, N.W., Washington, D.C. 20001. Please include the number of the particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, KONRAD W. SCHLATER, GREG M. SELFRIDGE, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JAMISON L. WEINBAUM, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.